

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ABBEY HOUSE MEDIA, INC, d/b/a
BOOKSONBOARD

Plaintiff,

v.

APPLE, INC., et al.,

Defendants.

Civil Action No. 14 Civ. 2000(DLC)

DIESEL EBOOKS, LLC

Plaintiff,

v.

APPLE, INC., et al.,

Defendants.

Civil Action No. 14 Civ. 1768(DLC)

DNAML PTY, LIMITED,

Plaintiff,

v.

APPLE, INC., et al.,

Defendants.

Civil Action No. 13 Civ. 6516(DLC)

**DEFENDANTS' JOINT NOTICE OF MOTION TO EXCLUDE
EXPERT OPINIONS OF JAMES D. RATLIFF**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, upon the accompanying Memorandum of Law and the Declaration of C. Scott Lent, dated October 30, 2015, and the documents submitted therewith, that defendants HarperCollins Publishers L.L.C., Apple, Inc.,¹ Hachette Book Group, Inc., Simon & Schuster, Inc., Verlagsgruppe Georg von Holtzbrinck GmbH and Holtzbrinck Publishers, LLC d/b/a Macmillan, and The Penguin Group, a Division of Pearson PLC (collectively, “Defendants”) respectfully move this Court, before the Honorable Denise L. Cote, United States District Judge for the Southern District of New York, and the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007, for an order excluding the expert opinions in the Expert Report of James D. Ratliff and the Reply Report of James D. Ratliff Concerning Causation (“Ratliff Reports”) and for such other and further relief as the Court deems appropriate.

This motion is brought under Federal Rules of Evidence 702 and 403 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Defendants respectfully request that the Court preclude Dr. Ratliff from testifying about the effects that the switch to Agency had on their businesses, and that the Court strike the following portions of Dr. Ratliff’s expert reports:

1. Initial Ratliff Rep. ¶ 18-21
2. Initial Ratliff Rep. ¶ 106-108
3. Initial Ratliff Rep. ¶ 127
4. Initial Ratliff Rep. ¶ 137
5. Initial Ratliff Rep. ¶ 145
6. Reply Ratliff Rep. ¶ 7-8

¹ Apple, Inc. is no longer a party to the litigation involving plaintiffs Diesel Ebooks, LLC and Abbey House Media, Inc, d/b/a BooksOnBoard.

7. Reply Ratliff Rep. ¶ 13
8. Reply Ratliff Rep. ¶ 15-17
9. Reply Ratliff Rep. ¶ 19 (partial)
10. Reply Ratliff Rep. ¶ 35 (last sentence)
11. Reply Ratliff Rep. ¶ 41
12. Reply Ratliff Rep. ¶ 114
13. Reply Ratliff Rep. ¶ 116
14. Reply Ratliff Rep. ¶ 120
15. Reply Ratliff Rep. ¶ 131-133
16. Reply Ratliff Rep. ¶ 135-136
17. Reply Ratliff Rep. ¶ 137 (last sentence)
18. Reply Ratliff Rep. ¶ 156
19. Reply Ratliff Rep. ¶ 159
20. Reply Ratliff Rep. ¶ 164
21. Reply Ratliff Rep. ¶ 180

Dated: October 30, 2015

Respectfully submitted,

/s/

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² Apple, Inc. is no longer a party to the litigation involving plaintiffs Diesel Ebooks, LLC and Abbey House Media, Inc, d/b/a BooksOnBoard.

CERTIFICATE OF SERVICE

I certify that the I have electronically filed the foregoing document using the CM/ECF system, and will separately send notification of such filing, as well as the accompanying Memorandum of Law and the Declaration of C. Scott Lent in support of the motion, to the e-mail addresses registered in the CM/ECF system.

Dated: October 30, 2015

By: ____/s/_____
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